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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 372

PAUL GINSBURG, Petitioner

v.

HON. PHILIP L. SULLIVAN, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and HON. ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDIX

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paul Ginsburg, petitioner, respectfully prays that a writ of certiorari issue in the above captioned case directed to the United States Court of Appeals for the Seventh Circuit to review its Orders dated and entered June 25, 1958 (App. 12, 25).

OPINIONS BELOW

There are no opinions below. Neither the United States District Court for the Northern District of Illinois, Eastern Division, nor the United States Court of Appeals for the Seventh Circuit delivered any opinions. Peti-

tioner, however, calls this Honorable Court's attention to his action against John D. Black, et al., out of which the instant matter has arisen, which was before this Court on petition for writ of certiorari at No. 788 October Term, 1956.

JURISDICTION

The unreported orders of the court of appeals denying the petitions for writs of mandamus (App. 12, 25) sought to be reviewed were dated and entered June 25, 1958. Therefore, the expiration date for the filing of this petition for writ of certiorari is September 23, 1958.

The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Section 1254 (1); and the general supervisory powers of this Court over lower Federal Courts.

QUESTIONS PRESENTED

1. May a clerk of a District Court withhold or exclude from the Record in a civil action pleadings duly lodged by a litigant therein in violation of Rule 79(a) of the Federal Rules of Civil Procedure? Affirmed.

2. When the clerk of a District Court withholds or excludes from the Record in a civil action pleadings duly lodged by a litigant therein, does that not interfere with said litigant's constitutional right to due process of law? Negatived.

3. May a District Court Judge make off-the-record decisions, in effect foreclosing a litigant's right to a record decision on the merits of the pleadings presented to said Judge? Affirmed.

4. When the Court of Appeals refuses (a) to order a District Court clerk to file and make appropriate Docket Entries of pleadings duly lodged by a litigant; and (b) to order a District Court Judge to make record decisions on the merits of pleadings presented to him pursuant to the Federal Rules of Civil Procedure and the applicable law; has it not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision? Negatived.

STATEMENT

Petitioner, Paul Ginsburg, is a citizen and resident of Pittsburgh, Pennsylvania, and a member in good standing of the bar of various Courts including this Honorable Court (App. 1, 13).

Respondent Hon. Philip L. Sullivan is a Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and respondent Roy H. Johnson is the Clerk of that Court (App. 1, 13).

In the said District Court your petitioner is the plaintiff in Civil Action No. 54C681, wherein John D. Black, et al., are the defendants (App. 1-2, 13-14). That action, with jurisdiction based upon diversity of citizenship and a sum in excess of $500,000.00 exclusive of interest and costs, is a suit for damages for unlawful publications of admittedly untrue and unprovable matters, libelous per se concerning petitioner, and intended to injure him professionally and personally. Respondent Judge Sullivan ordered summary judgment for defendants therein on the ground of absolute privilege, which was impossible

legally because the doctrine of absolute privilege can be applied only to matter contained in court pleadings, whereas the publications complained of below were admittedly made in disciplinary proceedings instituted by petitioner against said defendants below in the American Bar Association (App. 4, 16). *On appeal,* the judgment was affirmed on a different ground, lack of publication. Therefore, the court of appeals in effect overruled judgment on the ground of absolute privilege and granted judgment on a ground not before it. Furthermore, the affirmance did violence to the record because the defendants below had admitted publication. *On certiorari,* this Court at No. 788 October Term, 1956, denied review to petitioner, which does not imply approval of the judgment sought to be reviewed or of its supporting opinion (App. 5, 17).

The last pleading filed in this Court at No. 788 October Term, 1956, was petitioner's Motion for Leave to File Supplemental Record and Second Petition for Rehearing Out of Term Time; and, in the alternative, Motion to Remand, denied April 28, 1958 (App. 5, 17, 24). That pleading had appended to it in support thereof petitioner's District Court Motion to Vacate Summary Judgment Order and to Enter Order of Disqualification, which Judge Sullivan failed to hear and which was denied by District Judge Igoe who lacked jurisdiction; and petitioner's Petition for Writ of Mandamus to secure consideration thereof on the merits, which the court of appeals at No. 12256 denied February 18, 1958. Appended hereto (App. 25-26) is the clerk's letter enclosing certified copy thereof addressed to Mr. Robert Tieken, United States Attorney, 450 U.S. Court House, Chicago 4, Illinois, in-

dicating his connection therewith as alleged and his interest in the outcome. At the time when Mr. Tieken became United States Attorney, he was a partner of the defendants.

On May 14, 1958, petitioner lodged with respondent Roy H. Johnson, Clerk, for filing, his Motion for Leave to Amend Complaint and the annexed Amendment to the Complaint with notice of presentation thereof to respondent Judge Sullivan on June 13, 1958 (App. 5, 10-11). *On May 29 1958,* petitioner lodged with respondent Roy H. Johnson, Clerk, for filing, his Motion for Change of Venue with notice of presentation thereof to respondent Judge Sullivan on June 12, 1958 (App. 18, 23-24). Nevertheless, the respondent Clerk failed and refused to file the said pleadings and make appropriate docket entries of them (App. 5, 18).

On June 12, 1958, petitioner-plaintiff and opposing counsel on notice appeared before respondent Judge Sullivan (App. 6, 18, 27), at which time the said motions were presented to Judge Sullivan, who refused to consider the motions on the merits or even to enter orders thereon. Instead, respondent Judge Sullivan stated from the bench that there would be "no orders" on the motions (App. 6, 19, 29, 30), and called the next case. *Consequently, there is no record in the District Court that the motions were filed, presented or passed upon, and no record as a basis for appeal.*

In the court of appeals, averring that your petitioner is without other specific and adequate relief (App. 9), he lodged a Petition for Writ of Mandamus against the respondents herein at No. 12363 (App. 1), to secure the filing and docketing of said notice and motion for leave

to amend complaint and the annexed Amendment to the Complaint, and an Order that the motion be granted and the Amendment to the Complaint be filed with notice to defendants to plead thereto within twenty days (App. 9); and, averring that your petitioner is without other specific and adequate remedy at law (App. 21), he also lodged a Petition for Writs of Mandamus against these respondents at No. 12365 (App. 13) to secure the filing and docketing of the Notice and Motion for Leave to Amend Complaint and the annexed Amendment to the Complaint, as well as the Notice and Motion for Change of Venue, and an Order that a Hearing be set on the Motion for Change of Venue (App. 21). On June 25, 1958, the court of appeals entered Orders denying both petitions without the issuance of a rule (App. 12, 25), to review which Orders petitioner prays that this Court issue a writ of certiorari.

REASONS FOR ALLOWANCE OF THE WRIT

1. The Clerk of a District Court May Not Withhold or Exclude From the Record in a Civil Action Pleadings Duly Lodged by a Litigant Therein.

The Clerk of a District Court, like the Judges thereof, is bound by the Federal Rules of Civil Procedure as by an Act of Congress. See *Foltz v. Moore-McCormack Lines, Inc.*, 19 F.R.D. 301 (1956), wherein Judge Weinfeld of the District Court for the Southern District of New York held that Congress gave the Rules the force and effect of a statute (cf. 28 U.S.C., sec. 2072). When petitioner's pleadings in the district court were lodged with respondent Roy H. Johnson, Clerk, the pleadings should have been filed and docketed forthwith pursuant to Rule 79(a) which provides that he "shall" do so. By withholding and excluding pleadings from the record, the Clerk could usurp the function of the Court by determining in advance of consideration by the court that the pleadings are not entitled to consideration and accordingly they are denied. Furthermore, as in the instant case, such a Clerk could deny a litigant a record basis for appeal, and even the right to litigate. Petitioner respectfully submits that his right to have his pleadings filed and docketed in a Court of record is elementary.

2. When the Clerk of a District Court Withholds or Excludes From the Record Pleadings Duly Lodged by a Litigant, He Has Interfered With Said Litigant's Constitutional Right to Due Process of Law.

The record in the district court makes it plain that petitioner-plaintiff was litigating in respect to his professional and personal standing and property. Peti-

tioner's rights therein are guaranteed by the Constitution and laws of the United States, including his right to litigate with due process of law to protect and enforce said rights. In *Carroll v. Local No. 269 I.B.E.W.* (1943), 31 A2d 223, the Court stated (pp. 224-5): "It is not inappropriate, however, to remark that the right to earn a livelihood is a property right which is guaranteed in our country by the fifth and fourteenth amendments of the federal constitution . . .". In *Lasdon v. Hallihan*, 36 N.E. 2d 227 (1941), the Court stated (p. 231): "The right to follow the professions is one of the fundamental rights of citizenship. A person's business, profession or occupation is property within the meaning of the constitutional provision as to due process of law and is also included in the right to liberty and the pursuit of happiness". In *People v. Love*, 298 Ill. 304, 131 N. E. 809, the court held that "the right to pursue a lawful calling, business or profession, cannot be arbitrarily taken away . . .". In *Wilson, Inc., v. F. C. C.*, 170 F2d 793 (1948), the Court stated (p. 798): "A broadcasting license is a thing of value to the person to whom it is issued and a business conducted under it may be the subject of injury. We set forth in the margin quotations from decisions of the Supreme Court which support these statements . . .". In *Sorensen v. Jacobson*, 232 P2d 332 (1951), the Court stated (p. 336): "Under the due process provision, no citizen shall arbitrarily be deprived of his property. This the executive, legislative or the courts cannot do or authorize to be done. Due process of law extends to every case which may deprive a citizen of property. It requires an orderly proceeding adapted to the nature of the case and in accordance with law, in which the person has an opportunity

before the taking to be heard, and to defend, protect and enforce his rights. Before the property of a person can be taken by another and converted to his own use, a hearing or opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this". Therefore, the respondent Clerk's actions were unlawful, and the court of appeals erroneously sanctioned them.

3. Under the Federal Rules of Civil Procedure and the Applicable Law a District Court Judge Is Powerless to Make Off-The-Record Decisions, in Effect Foreclosing a Litigant's Right to a Record Decision on the Merits of the Pleadings Presented to Said Judge.

There was nothing unusual or unprecedented about the motions your petitioner presented to respondent Judge Sullivan. They were normal pleadings properly presented in the ordinary course of judicial proceedings, pursuant to the Federal Rules of Civil Procedure and the applicable law. Plaintiff-petitioner's right to amend the complaint below was absolute under Rule 15 (a) and the consent of defendants and leave of court were not even required. The said Amendment to the Complaint conformed to the Opinion of the court of appeals and petitioner was entitled thereto even after judgment. In *Saper v. Hague,* 186 F2d 592 (1951) 2 CCA, the Court held that even a motion to conform a pleading to proof may be made at any time, even after judgment. In *DuPont v. U. S. Cama Corp., et al.,* 19 F. R. D. 495 (1956), W. D. Mo., the Court held that there is no limitation on time to amend, only due diligence being required; and generally leave is granted freely where justice requires and particularly when the amendment is directed to

clarification of the issues. In *Copeland v. General Motors Corp.*, 199 F2d 566 (1952) 5 CCA, the Court held that a party may amend freely to secure a determination on merits rather than on technicalities; and there is no laches where amendment is tendered shortly after awaited decision of issues by the Supreme Court. In view of the foregoing and the record below, respondent Judge Sullivan had no alternative but to grant petitioner's Motion to Amend Complaint and to require the defendants below to plead to the Amendment to the Complaint within twenty days. Judge Sullivan's refusal even to enter an Order thereon supports petitioner's prior motion that Judge Sullivan enter an Order of his disqualification because of the failure of Judge Sullivan and the defendants below to disclose to plaintiff-petitioner their relationship arising out of the defendants' representation of the interests of Judge Sullivan's brother, Harold E. Sullivan, Esquire, in connection with his criminal convictions in the concurrent course of the case of *United States v. Shotwell Manufacturing Co., Harold E. Sullivan, et al.*, 355 U. S. 233 (1957), and up to the present time in that case and as a defendant in other criminal cases.

The subject of respondent Judge Sullivan's disqualification as aforesaid was the primary reason in support of petitioner's Motion for Change of Venue, on which Judge Sullivan refused to enter an Order. Judge Sullivan's off-the-record decisions below which in effect foreclose your petitioner's right to record decisions on the merits as well as petitioner's right to litigate against the attorneys for the Judge's brother, speak for themselves. Furthermore, the record leaves no doubt that the court of appeals knew exactly what it was sanction-

ing. Can any reasonable man criticize your petitioner's motion to get his case out of such a District and Circuit? Could any Judge who acknowledges that he is bound by the Federal Rules of Civil Procedure and the applicable law deny petitioner a Hearing on such a motion?

4. The Court of Appeals Has So Far Departed From the Accepted and Usual Course of Judicial Proceedings, and So Far Sanctioned Such a Departure by the District Court, as to Call for an Exercise of This Court's Power of Supervision.

This consideration governing review on certiorari is plainly set forth in paragraph 1 (b) of Rule 19 of this Court's Rules. Furthermore, petitioner cited to the court of appeals (App. 8, 20) this Honorable Court's decision in the case from its own court and the same District, in *La Buy, United States District Judge, v. Howes Leather Co., Inc., et al.*, 352 U. S. 249 (1957), affirming 226 F2d 703 (7 CCA), wherein Mr. Justice Clark in the majority opinion (pp. 259-260) stated: "Supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the Federal System; and the All Writs Act, 28 U. S. C. sec. 1651 (a), confers on the Courts of Appeals the discretionary power to issue extraordinary writs in exceptional circumstances such as exist herein". What circumstances could be more exceptional than the ones that exist herein where a Clerk withholds and excludes from the record pleadings duly lodged for filing, denying the party his constitutional right to due process of law, and a Judge makes off-the-record decisions in effect foreclosing a litigant's right to litigate under the Federal Rules of Civil Procedure and the applicable law?

The court of appeals without justification erred in refusing to order the respondent Clerk to file and make appropriate Docket Entries of the pleadings petitioner lodged with him for filing; and in refusing to order respondent Judge Sullivan to make record decisions on the merits of petitioner's motions, compelling him to grant the motion to amend and require defendants below to plead to the Amendment to the Complaint within twenty days, and to set a Hearing on the Motion for Change of Venue. It is respectfully submitted that this Court should do so.

Conclusion

What has happened in the instant case in the Seventh Circuit at Chicago, and to a lesser degree in *U.S. v. Shotwell-Sullivan, supra*, and in other cases too numerous to mention, is frowned upon by many learned in the law as business as usual. It would not occur to those who are not learned in the law that what has happened to petitioner in Chicago has deprived him of federal constitutional and civil rights, including loss of profits of millions of dollars. The public as well as officialdom has been conditioned to harbor the false notion that the only deprivations of civil rights occur in the South and solely in connection with the right to vote and the right to attend an integrated school. As a matter of fact, there are daily deprivations of civil rights in the North, of a different type but nonetheless civil rights that are "guaranteed" as in the instant case. There simply is not any organization to protect and enforce such rights, because they are unpopular politically.

The instant petition, like any other, could be flatly denied on technical considerations and fail to receive

consideration in the interest of justice. However, the result could be an interpretation that the approval of the actions below is not local to Chicago, but national. This could backfire on the Federal Government of the North that has recently been critical of some State Governments of the South, and cause a legal obstruction of Justice. Our Federal Government was instrumental in persuading this Honorable Court last week to order immediate integration of public schools in Arkansas, in opposition to which that State is asserting its rights. Thus far our Federal Government anticipates litigious problems in the State Courts only. But, the denial of certiorari herein could cause more serious problems in Federal Court, wherein the Clerk could justifiably decide not to file and docket the Federal Government's pleadings and the Judge could justifiably make off-the-record decisions, all denying due process of law, the right to appeal and even the right to litigate. The fantastic but foreseeable result could effectuate a reversal of this Honorable Court's mandate by a District Court in Arkansas.

The District Court has not justified its existence. The Court of Appeals has not served its purpose. Will not this Honorable Court justify the existence of the District Court and compel the Court of Appeals to serve its purpose?

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PAUL GINSBURG, Petitioner,
v.
HON. PHILIP L. SULLIVAN, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division. } No. 12363

Petition for Writs of Mandamus

To the Honorable, the Chief Judge and the Judges of said Court:

The petition of Paul Ginsburg respectfully represents:

1. Petitioner, Paul Ginsburg, is a citizen and resident of the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania; and is a member in good standing of the bar of the Supreme Court of the United States.

2. Respondent, Hon. Phillip L. Sullivan, is a Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and Respondent Hon. Roy H. Johnson is the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, both within the jurisdiction of this Honorable Court.

3. In the said District Court at No. 54 C681 petitioner, as plaintiff, filed a civil action against John D.

Black, John C. Slade, Guy Allen Gladson, Edward G. Ince, Bryce L. Hamilton, Reuben A. Borsch, Douglas C. Moir, James D. Head, Gerard E. Greshorn, George W. Ott, Grier D. Patterson, Walter A. Wade, Thomas I. Underwood, Thomas A. Reynolds, Frank B. Gilmer, Robert McDougal, Jr., Albert W. Potts and William C. Mulligan, as defendants.

4. The said action below is a suit for damages brought by Paul Ginsburg, a lawyer of Pittsburgh, Pennsylvania, against the defendants, who are Chicago lawyers, for their unlawful publication of admittedly untrue and unprovable matters, libelous per se concerning plaintiff-petitioner, and intended to injure him professionally and personally. It appears that the said defendants were motivated to libel your petitioner on account of his exposing their fraud and imposition upon the State Court in Kentucky in the matter of the sale of 85% of the shares of stock of American Creosoting Company and subsidiaries by the Estate of Sallie A. Hert, Deceased.

5. Through their imposition and fraud upon the Court as aforesaid, the said defendants were enabled to obtain the shares of stock for their client, Alfred L. Kuehn, a co-trustee of the Estate, (through a corporation, as purchaser, which had been formed by Mr. Kuehn and his sons) at a price which was several millions of dollars below the real value. As a result, not only was the Trust Estate cheated out of millions of dollars, but also your petitioner and his client were wrongfully deprived of their opportunity to secure several millions of dollars in profits through purchase of the shares of stock.

6. The libelous matters complained of were published in the course of disciplinary proceedings before the American Bar Association brought by your petitioner against said defendants. Upon the filing of the complaint, the case was assigned to respondent Judge Philip L. Sullivan whose brother, and others, had been convicted in the same Court at No. 52 CR 143 on October 16, 1953, on charges of income tax evasion and sentenced to imprisonment and to pay fines. Notices of Appeal to this Honorable Court were filed on behalf of Harold E. Sullivan (Judge Sullivan's brother) and his co-defendants at Nos. 11108, 11109, 11110 and 11111.

7. Respondent, Hon. Philip L. Sullivan, set the pretrial conference in your petitioner's case for December 22, 1954, one week prior to which time the said defendants doing business as Winston, Strawn, Black & Towner appeared in this Honorable Court and filed a brief in the appeals in which Judge Sullivan's brother was involved which brief was for the benefit of all those defendants; made the principal argument for all said defendants in this Honorable Court; made the only argument on their behalf at No. 1 October Term, 1957, in the Supreme Court of the United States; and to this date are still representing their interests.

8. At no time in the course of your petitioner's case against the defendants doing business as Winston, Strawn, Black & Towner, did Judge Sullivan or the defendants disclose to petitioner their said relationship, which disclosure would have placed petitioner in position to seek respondent Judge Sullivan's removal for self-interest. On July 1, 1955, Judge Sullivan entered a Summary Order therein against your petitioner and in favor

of the defendants by applying the doctrine of absolute privilege. It is elementary that the doctrine of absolute privilege can never be applied legally to libelous matters unless they are published in court pleadings, and then the application is restricted. Therefore, Judge Sullivan's patently illegal application of the doctrine therein supports petitioner's charge of the Judge's self-interest, because the publications complained of were admittedly made in the course of proceedings before the American Bar Association, a voluntary association.

9. On your petitioner's appeal to this Honorable Court at No. 11595, this Court would not affirm on the ground of absolute privilege but did so on a different ground—lack of publication. (273 F.2d 790). In effect this Court reversed the application of the doctrine of absolute privilege, and then affirmed on a ground for which there was no record support, because not only had the defendants below admitted publication, but there had never been a hearing below on that issue. The only forum wherein to establish a record on which to base the said issue is the District Court. Appellate Courts are without facilities and jurisdiction to make a record on issues. See United States of America v. Shotwell Manufacturing Company, Harold E. Sullivan, et al., 355 U.S. 233 (December 16, 1957), where in the Supreme Court of the United States decided that the District Court is the only forum wherein to establish the record on issues, and in the absence of such record in the District Court, that particular issue cannot be the subject of an appeal in the Court of Appeals or of review in the Supreme Court. Furthermore, in support of the point that the jurisdiction of the Court of Appeals is exclusively appellate and that it is not the function of the Court of

Appeals to assume the powers of the District Court, See Ralston Purina Co. v. Novak, 111 F.2d, 631, Stephenson v. Equitable Life Assur. Soc. of U.S., 98 F. 2d 406, and Publicity Building Realty Corp., et al., v. Hannegan, et al., 139 F. 2d 583. Furthermore, the denial of certiorari by the Supreme Court at No. 788 October Term, 1956 (353 U.S. 911). "Does not imply approval of the decision for which review is sought or of its supporting opinion". See Elgin, Joliet & Eastern Rwy. Co. v. Gibson, 7 CCA 355 U.S. 897 (1957); citing Brown v. Allen, 344 U.S. 443. Your petitioner's last pleading filed in the Supreme Court in said matter was denied on April 28, 1958.

10. Promptly after the Supreme Court's denial of relief to petitioner, he served Notice upon defendants in the said action below before Respondent Judge Sullivan that he would present his Motion for Leave to Amend Complaint on June 13, 1958. The Notice of Motion, the Motion for Leave to Amend Complaint and the Amendment to the Complaint were lodged with Respondent Roy H. Johnson, Clerk, for filing on May 14, 1958 and are attached hereto, made part hereof and marked Exhibit A. Nevertheless, the respondent clerk did not mark them filed and did not make docket entries of them, but simply forwarded them to Respondent Judge Sullivan for disposition.

The Amendment was filed in strict compliance with the applicable law and Rule 15(a), which provides for the allowance of course of one amendment prior to trial, as a matter of right. It is evident herein that there has been no trial nor has there been a hearing on any issue except absolute privilege. Furthermore, the amendment

to the complaint conforms to the opinion of this Honorable Court which indicated that the publication was made by the defendants through and by the agency of the American Bar Association.

Under Rule 15, therefore, leave of court was not even required. The amendment was filed timely because under the Rules and the applicable law there is no limitation of time for amendments, the only requirement being due diligence; and the plaintiff could hardly have been more duly diligent because the amendment was filed within two weeks after notification of denial in the Supreme Court. Furthermore, such an amendment is allowable under the law at any time, even after judgment.

11. On June 12, 1958 your petitioner appeared before respondent Judge Sullivan to present the said Motion for Leave to Amend Complaint, Exhibit A hereof, as well as a Motion for Change of Venue and R. Lawrence Storms, Esquire, of Winston, Strawn, Smith & Patterson, record counsel for the defendants therein also appeared on Notice. Respondent Judge Sullivan stated from the bench that the Court no longer had jurisdiction and that he would not enter orders on the motions. Lodged herewith for the information of this Honorable Court is a transcript of the said proceedings before Respondent Judge Sullivan. This Court's attention is particularly directed to page 4 thereof whereon the following statement of Respondent Judge Sullivan appears: "THE COURT: No order on both motions; no jurisdiction."

12. It is elementary that Respondent Roy H. Johnson, Clerk, had no alternative upon receipt of the said

Notice and Motion but to mark them filed and to make docket entries of them in advance of forwarding them to Respondent Judge Sullivan. Prior to presentation of the said Motion to Respondent Judge Sullivan your petitioner requested the Respondent Clerk to mark the said Notice and Motion filed and to make docket entries of them, but he stated that he would do nothing until conferring with Respondent Judge Sullivan. After your petitioner's attempted presentation of the motion to Respondent Judge Sullivan he was notified by Respondent Clerk that Respondent Judge Sullivan orally ordered the Clerk not to mark the papers filed and not to make docket entries of them for lack of jurisdiction.

13. It is elementary that Respondent Judge Sullivan in refusing to consider or enter an order on petitioner's Motion for Leave to Amend Complaint and has acted in violation of the federal Rules of Civil Procedure and the applicable law. Under the rules he was bound to give full consideration to the motion and having done so, he was bound to enter an order thereon. District Court Judges are bound by the federal Rules of Civil procedure as by an Act of Congress. See Foltz v. Moore-McCormack Lines, Inc., 19 F. R. D. 301 (1956), wherein it was held analogously that the motion must be granted because Congress gave the federal Rules of Civil Procedure the force and effect of a statute (Cf. 28 U.S.C. sec. 2072).

14. Further support of petitioner's right to the said amendment is the following: A defense not presented by pleading or motion of defendant and not tried and not asserted by defendant to be in the case was not before the Courts of Appeals, DuPont v. Martin, 174 F.2d 602 (1949), 6 CCA and a defense that an order to

show cause was insufficient process, made for the first time in briefs in Court of Appeals, was too late; Carter v. Powell, 104 F.2d 428 (1939), 5 CCA, rehearing denied 104 F.2d 1012, certiorari denied 308 U.S. 611.

15. The respondent's failure to exercise his power under the Rules legally has subjected him to the supervisory control of this Honorable Court through the instant petition. Support for this contention is found in the case of LaBuy, United States District Judge, v. Howes Leather Co., Inc., et al., 352 U.S. 249 (1957), affirming 226 F.2d 703 (7 CCA), wherein the Supreme Court of the United States held in the majority opinion (pp. 259-260) by Mr. Justice Clark, "Supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the Federal system; and the All Writs Act, 28 U.S.C. sec. 1651(a), confers on the Courts of Appeals the discretionary power to issue extraordinary writs in exceptional circumstances such as exist herein."

16. It is respectfully submitted that just as respondent Judge Sullivan has subjected himself to the supervisory control of this Honorable Court, this Court's denial of the petition would likewise subject it to the Supreme Court's power of supervision as set forth in Rule 19 of the Supreme Court of the United States setting forth considerations governing review on certiorari, wherein paragraph 1(b) provides for certiorari where a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's power of supervision.

17. In view of the foregoing, it is respectfully submitted that respondent Roy H. Johnson, Clerk, should be directed to mark your petitioner's said Motion for Leave to Amend Complaint filed as of May 14, 1958 and to make a docket entry of it; and further, respondent Judge Sullivan should be directed to enter an order that the Motion for Leave to Amend Complaint be granted.

18. Your petitioner is without other specific and adequate relief.

WHEREFORE, petitioner prays that this Honorable Court grant a Rule directed against the respondent, Roy H. Johnson, to show cause why a Writ of Mandamus should not be issued directing him to mark plaintiff-petitioner's Notice and Motion For Leave to Amend Complaint and the annexed Amendment to the Complaint filed May 14, 1958, and to enter the appropriate Docket Entries thereof at Civil Action No. 54 C 681 in the United States District Court for the Northern District of Illinois, Eastern Division; and that this Honorable Court grant a Rule directed against the respondent, Philip L. Sullivan, to show cause why a Writ of Mandamus should not be issued directing him to grant plaintiff-petitioner's Motion for Leave to Amend Complaint, order the annexed Amendment to the Complaint filed with notice to the defendants to plead thereto within twenty days from the filing thereof at Civil Action No. 54 C 681 in the United States District Court for the Northern District of Illinois, Eastern Division.

S/ PAUL GINSBURG
Petitioner

AFFIDAVIT

Commonwealth of Pennsylvania
County of Allegheny } ss.:

Before me, a Notary Public in and for said County and State, personally appeared Paul Ginsburg, petitioner above named, who being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true and correct.

S/ PAUL GINSBURG

Sworn to and subscribed before me this 18th day of June, 1958.

S/ BINA B. ZEIDMAN

Bina M. Ziedman, Notary Public
Pittsburgh, Allegheny County
My Commission Expires February 5, 1959

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PAUL GINSBURG, Plaintiff,
v.
JOHN D. BLACK, ET AL., Defendants. } Civil Action No. 54 C 681

NOTICE OF MOTION

YOU ARE HEREBY NOTIFIED that on Friday, the 13th day of June, 1958, at the opening of Court in the forenoon, or as soon thereafter as plaintiff can be heard, in the United States Court House at Chicago, Illinois, plaintiff will appear in the Court Room assigned to Hon.

Philip L. Sullivan and, then and there, present to the said Judge the following:

MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiff moves the Court, pursuant to the federal Rules of Civil Procedure and the applicable law, for leave to file the annexed Amendment To The Complaint, with notice to the defendants to plead thereto within twenty days from the filing thereof.

S/ PAUL GINSBURG
Plaintiff

Dated: 13 May 1958

AMENDMENT TO THE COMPLAINT

Plaintiff hereby makes the following amendment to the Complaint.

The entire Complaint shall remain as originally filed and averred, and in addition thereto plaintiff hereby adds the following averment to be included in said Complaint:

17th. The aforesaid libels published of and concerning the plaintiff were published throughout the United States, particularly among members of the bar of the forty-eight states, by the defendants, their attorneys, agents, servants and employees, as well as through and by the agency of said American Bar Association.

S/ PAUL GINSBURG
Plaintiff

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

June 25, 1958

Before
Hon. Philip J. Finnegan,
Hon. John S. Hastings,
Hon. W. Lynn Parkinson.

PAUL GINSBURG		PETITION FOR
No. 12363	v.	WRIT OF
HON. PHILIP P. SULLIVAN, ET AL.		MANDAMUS

ORDER

The Court is of the opinion that the facts alleged and set forth in the petition filed June 20, 1958, do not justify a hearing; consequently we refuse to issue a rule to show cause why a writ of mandamus should not issue. Petition for writ of mandamus is hereby DENIED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PAUL GINSBURG, Petitioner,

v.

HON. PHILIP L. SULLIVAN, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and HON. ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division.

No. 12365

Petition for Writs of Mandamus

To the Honorable, the Chief Judge and the Judges of said Court:

The petition of Paul Ginsburg respectfully represents:

1. Petitioner, Paul Ginsburg, is a citizen and resident of the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania; and is a member in good standing of the bar of the Supreme Court of the United States.

2. Respondent, Hon. Philip L. Sullivan, is a Judge of the United States District Court for the Northern District of Illinois, Eastern Division, and Respondent, Hon. Roy H. Johnson, is the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, both within the jurisdiction of this Honorable Court.

3. In the said District Court at No. 54 C 681 petitioner, as plaintiff, filed a civil action against John D.

Black, John C. Slade, Guy Allen Gladson, Edward G. Ince, Bryce L. Hamilton, Reuben A. Borsch, Douglas C. Moir, James D. Head, Gerard E. Grashorn, George W. Ott, Grier D. Patterson, Walter A. Wade, Thomas I. Underwood, Thomas A. Reynolds, Frank B. Gilmer, Robert McDougal, Jr., Albert W. Potts and William C. Mulligan, as defendants.

4. The said action below is a suit for damages brought by Paul Ginsburg, a lawyer of Pittsburgh, Pennsylvania, against the defendants, who are Chicago lawyers, for their unlawful publication of admittedly untrue and unprovable matters, libelous per se concerning plaintiff-petitioner, and intended to injure him professionally and personally. It appears that the said defendants were motivated to libel your petitioner on account of his exposing their fraud and imposition upon the State of Kentucky in the matter of the sale of 85% of the shares of stock of American Creosoting Company and subsidiaries by the Estate of Sallie A. Hart, Deceased.

5. Through their imposition and fraud upon the Court as aforesaid, the said defendants were enabled to obtain the shares of stock for their client, Alfred L. Kuehn, a co-trustee of the Estate (through a corporation, as purchaser, which had been formed by Mr. Kuehn and his sons) at a price which was several millions of dollars below the real value. As a result, not only was the Trust Estate cheated out of millions of dollars, but also your petitioner and his client were wrongfully deprived of their opportunity to secure several millions of dollars in profits through purchase of the shares of stock.

6. The libelous matters complained of were published in the course of disciplinary proceedings before the American Bar Association brought by your petitioner against said defendants. Upon the filing of the complaint, the case was assigned to respondent Judge Philip L. Sullivan whose brother, and others, had been convicted in the same Court at No. 52 CR 143 on October 16, 1953, on charges of Income tax evasion and sentenced to imprisonment and to pay fines. Notices of Appeal to this Honorable Court were filed on behalf of Harold E. Sullivan (Judge Sullivan's brother) and hs co-defendants at Nos. 11108, 11109, 11110 and 11111.

7. Respondent, Hon. Philip L. Sullivan, set the pre-trial conference in your petitioner's case for December 22, 1954, one week prior to which time the said defendants doing business as Winston, Strawn, Black & Towner appeared in this Honorable Court and filed a brief in the appeals in which Judge Sullivan's brother was involved which brief was for the benefit of all those defendants; made the principal argument for all said defendants in this Honorable Court; made the only argument on their behalf at No. 1 October Term, 1957, in the Supreme Court of the United States; and to this date are still representing their interests.

8. At no time in the course of your petitioner's case against the defendants doing business as Winston, Strawn, Black & Towner, did Judge Sullivan or the defendants disclose to petitioner their said relationship, which disclosure would have placed petitioner in position to seek respondent Judge Sullivan's removal for self-interest. On July 1, 1955, Judge Sullivan entered a Summary Order therein against your petitioner and in

favor of the defendants by applying the doctrine of absolute privilege. It is elementary that the doctrine of absolute privilege can never be applied legally to libelous matters unless they are published in court pleadings, and then the application is restricted. Therefore, Judge Sullivan's patently illegal application of the doctrine therein supports petitioner's charge of the Judge's self-interest, because the publications complained of were admittedly made in the course of proceedings before the American Bar Association, a voluntary association.

9. On your petitioner's appeal to this Honorable Court at No. 11595, this Court would not affirm on the ground of absolute privilege but did so on a different ground—lack of publication (273 F.2d 790). In effect this Court reversed the application of the doctrine of absolute privilege, and then affirmed on a ground for whch there was no record support, because not only had the defendants below admitted publication but there had never been a hearing below on that issue. The only forum wherein to establish a record on which to base the said issue is the District Court. Appellate Courts are without facilities and jurisdiction to make a record on issues. See United States of America v. Shotwell Manufacturing Company, Harold E. Sullivan, et al., 355 U.S. 233 (December 16, 1957), in which case the Supreme Court of the United States decided that the District Court is the only forum wherein to establish the record on issues, and in the absence of such record in the District Court, that particular issue cannot be the subject of an appeal in the Court of Appeals or of review in the Supreme Court. Furthermore, in support of the point that the jurisdiction of the Court of Appeals is exclu-

sively appellate and that it is not the function of the Court of Appeals to assume the powers of the District Court. See Ralston Purina Co. v. Novak, 111 F.2d 631, Stephenson v. Equitable Life Assur. Soc. of U. S., 97 F.2d 406, and Publicity Building Realty Corp., et al., v. Hannegan, et al., 139 F.2d 583. Furthermore, the denial of certiorari by the Supreme Court at No. 788 October Term, 1956 (353 U.S. 911), "Does not imply approval of the decision for which review is sought or of its supporting opinion". See Elgin, Joliet & Eastern Rwy. Co. v. Gibson, 7 CCA, 355 U.S. 897 (1957), citing Brown v. Allen, 344 U.S. 443. Your petitioner's last pleading filed in the Supreme Court in said matter was denied on April 28, 1958.

10. Promptly after the Supreme Court's denial of relief to petitioner, he served Notice upon defendants in the said action below before Respondent Judge Sullivan that he would present his Motion for Leave to Amend Complaint on June 13, 1958. The Notice of Motion, the Motion for Leave to Amend Complaint and the Amendment to the Complaint were lodged with Respondent Roy H. Johnson, Clerk, for filing on May 14, 1958. Nevertheless, the respondent clerk did not mark them filed and did not make docket entries of them, but simply forwarded them to Respondent Judge Sullivan for disposition. The Amendment was filed in strict compliance with the applicable law and Rule 15(a), which provides for the allowance of course of one amendment prior to trial, as a matter of right. It is evident herein that there has been no trial nor has there been a hearing on any issue except absolute privilege. Furthermore, the amendment to the complaint conforms to the opinion of this Honorable Court which indicated that the publication

was made by the defendants through and by the agency of the American Bar Association. Under Rule 15, therefore, leave of court was not even required. The amendment was filed timely because under the Rules and the applicable law there is no limitation of time for amendments, the only requirement being due diligence; and the plaintiff could hardly have been more duly diligent because the amendment was filed within two weeks after notification of denial in the Supreme Court. Furthermore, such an amendment is allowable under the law at any time, even after judgment.

11. While petitioner's said Motion for Leave to Amend Complaint was pending, he served Notice upon defendants in the said action below before respondent Judge Sullivan that he would present his Motion for Change of Venue on June 12, 1958. The Notice of Motion and the Motion for Change of Venue were lodged with respondent Roy H. Johnson, Clerk, for filing on May 29, 1958, and are attached hereto, made part hereof and marked Exhibit A. Nevertheless, the respondent clerk did not mark them filed and did not make docket entries of them, but simply forwarded them to respondent Judge Sullivan for disposition.

12. On June 12, 1958 your petitioner appeared before respondent Judge Sullivan to present the Motion for Change of Venue, Exhibit A hereof, as well as the said Motion for Leave to Amend Complaint and R. Lawrence Storms, Esquire, of Winston, Strawn, Smith & Patterson, record counsel for the defendents therein also appeared on Notice. Respondent Judge Sullivan stated from the bench that the Court no longer had jurisdiction and that he would not enter orders on the

motions. Lodged herewith for the information of this Honorable Court is a transcript of the said proceedings before Respondent Judge Sullivan. This Court's attention is particularly directed to page 4 thereof whereon the following statement of Respondent Judge Sullivan appears: "THE COURT: No order on both motions; no jurisdiction." Respondent Judge Sullivan's excuse for his refusal to enter an Order, "no jurisdiction", is as fantastic beyond belief as his decision, "no order," is illegal beyond comprehension.

13. It is elementary that Respondent Roy H. Johnson, Clerk, had no alternative upon receipt of the said Notices and Motions but to mark them filed and to make docket entries of them in advance of forwarding them to Respondent Judge Sullivan. Prior to presentation of the said Motions to Respondent Judge Sullivan your petitioner requested the Respondent Clerk to mark the said Notices and Motions filed and to make docket entries of them, but he stated that he would do nothing until conferring with Respondent Judge Sullivan. After your petitioner's attempted presentation of the Motions to Respondent Judge Sullivan he was notified by Respondent Clerk that Respondent Judge Sullivan orally ordered the Clerk not to mark the papers filed and not to make docket entries of them for lack of jurisdiction.

14. It is elementary that Respondent Judge Sullivan in refusing to consider or enter an order on petitioner's said Motions has acted in violation of the federal Rules of Civil Procedure and the applicable law. Under the rules he was bound to give full consideration to the Motions and having done so, he was bound to enter Orders thereon. District Court Judges are bound by

the federal Rules of Civil Procedure as by an Act of Congress. See Foltz v. Moore-McCormack Lines, Inc., 19 F.R.D. 301 (1956), wherein it was held analogously that the motion must be granted because Congress gave the federal Rules of Civil Procedure the force and effect of a statute (Cf. 28 U.S.C. sec. 2072).

15. The respondent Judge's faliure to exercise his power under the Rules legally has subjected him to the supervisory control of this Honorable Court through the instant petition. Support for this contention is found in the case of LaBuy, United States District Judge, v. Howes Leather Co., Inc., et al., 352 U.S. 249 (1957), affirming 226 F.2d 703 (7 CCA), wherein the Supreme Court of the United States held in the majority opinion. (pp. 259-260) by Mr. Justice Clark, "Supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the Federal system; and the All Writs Act, 28 U.S.C. sec. 1651(a), confers on the Courts of Appeals the discretionary power to issue extraordinary writs in exceptional circumstances such as exist herein."

16. It is respectfully submitted that just as respondent Judge Sullivan has subjected himself to the supervisory control of this Honorable Court, this Court's denial of this petition would likewise subject it to the Supreme Court's power of supervision as set forth in Rule 19 of the Supreme Court of the United States setting forth considerations governing review on certiorari, wherein paragraph 1(b) provides for certiorari where a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as

to call for an exercise of the Supreme Court's power of supervision.

17. In view of the foregoing, it is respectully submitted that respondent Roy H. Johnson, Clerk, should be directed to mark your petitioner's said Motion for Leave to Amend Complaint filed as of May 14, 1958, and his said Motion for Change of Venue filed as of May 28, 1958, and to make docket entries of them; and further, respondent Judge Sullivan should be ordered and directed to set a Hearing on your petitioner's said Motion for Change of Venue, and after full hearing and consideration thereof, to enter an Order thereon under the federal Rules of Civil Procedure and the applicable law.

18. Your petitioner is without other specific and adequate remedy at law.

WHEREFORE, petitioner prays that this Honorable Court grant a Rule directed against the respondent, Roy H. Johnson, to show cause, if any, why a Writ of Mandamus should not be issued directing him to mark plaintiff-petitioner's Notice and Motion for Leave to Amend Complaint and the annexed Amendment to the Complaint filed May 14, 1958, and to mark plaintiff-petitioner's Notice and Motion for Change of Venue, Exhibit A hereof, filed May 29, 1958; and to enter the appropriate Docket Entries thereof at Civil Action No. 54 C 681 in the United States District Court for the Northern District of Illinois, Eastern Division; and that this Honorable Court grant a Rule directed against the respondent, Philip L. Sullivan, to show cause, if any, why a Writ of Mandamus should not be issued directing him to set a Hearing on plaintiff-petitioner's Motion for Change of Venue and, after full hearing and considera-

tion thereof to enter an Order thereon under the federal Rules of Civil Procedure and the applicable law, at Civil Action No. 54 C 681 in the United States District Court for the Northern District of Illinois, Eastern Division.

S/ PAUL GINSBURG
Petitioner

AFFIDAVIT

Commonwealth of Pennsylvania)
County of Allegheny) ss.:

Before me, a Notary Public in and for said County and State, personally appeared Paul Ginsburg, petitioner above named, who being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true and correct.

S/ PAUL GINSBURG

Sworn to and subscribed before me this 20th day of June, 1958.

S/ BINA B. ZEIDMAN

Bina M. Ziedman, Notary Public
Pittsburgh, Allegheny County
My commission expires February 5, 1959.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

PAUL GISNBURG, Plaintiff,
v.
JOHN D. BLACK, ET AL., Defendants.

Civil Action
No. 54 C 681

NOTICE OF MOTION

YOU ARE HEREBY NOTIFIED that on Thursday, the 12th day of June, 1956, at the opening of Court in the forenoon, or as soon thereafter as plaintiff can be heard, in the United States Court House at Chicago, Illinois, plaintiff will appear in the Court Room assigned to Hon. Philip L. Sullivan and, then and there, present to the said Judge the following:

MOTION FOR CHANGE OF VENUE

Plaintiff moves that this Honorable Court, in the interest of justice, enter an Order transferring the above entitled action from this District to the United States District Court for the Western District of Pennsylvania where the plaintiff resides, or, in the alternative, to the United States District Court for the District of Columbia or the United States District Court for the Southern District of New York where none of the parties resides; and in support hereof avers:

1. The Judge of this Honorable Court to whom said action has been assigned, Hon. Philip L. Sullivan, is unqualified because of his self-interest; and is prejudived in favor of the defendants and against the plaintiff.

2. Because of Judge Sullivan's prestige, influence and standing in said District, the plaintiff will be de-

prived of an impartial, unprejudiced, fair and proper tribunal and atmosphere in which lawful disposition of his Complaint may be anticipated.

3. A transfer of this cause to another District such as the Western District of Pennsylvania where the plaintiff resides, or the District of Columbia or Southern District of New York where none of the parties resides; but which Districts are comparable to this District, would promote the principles and rights of litigants to fair and impartial administration of justice and an atmosphere untained by prejudice as herein set forth.

4. In support hereof is attached hereto and marked Exhibit "A" as part hereof, a copy of plaintiff's last pleading filed in this matter at No. 788 October Term, 1956, in the Supreme Court of the United States (denied on April 28, 1958), entitled "Motion For Leave To File Supplemental Record and Second Petition For Rehearing Out of Term Time; And, In the Alternative, Motion To Remand". NOTE: Instead of attaching the said cumbersome Exhibit, reference is hereby made to the same appendix which is of record in this Honorable Court at No. 12256.

WHEREFORE, plaintiff respectfully moves that this Honorable Court enter an Order transferring the cause to an appropriate District.

S/ PAUL GINSBURG
Plaintiff
Carlton House
550 Grant Street
Pittsburgh 19, Pa.

Dated: 28 May 1958

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

June 25, 1958

Before
Hon. Philip J. Finnegan,
Hon. John S. Hastings,
Hon. W. Lynn Parkinson.

PAUL GINSBNRG
No. 12365 v.
HON. PHILIP L. SULLIVAN, ET AL.

Petition for Writ Of Mandamus

ORDER

The Court is of the opinion that the facts alleged and set forth in the petition filed June 21, 1958, do not justify a hearing; consequently we refuse to issue a rule to show cause why a writ of mandamus should not issue. Petition for writ of mandamus is hereby DENIED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
1212 Lake Shore Drive
Chicago 10

Kenneth J. Carrick
Clerk

March 28, 1958

Hon. Philip L. Sullivan
United States District Judge
United States Court House
Chicago 4, Illinois

Hon. Michael L. Igoe
United States District Judge
United States Court House
Chicago 4, Illinois

Mr. Paul Ginsburg
550 Grant Street
Pittsburgh 19, Pennsylvania

Mr. Robert Tieken
United States Attorney
450 U. S. Court House
Chicago 4, Illinois

Mr. George B. Christensen
Attorney at Law
38 So. Dearborn Street
Chicago, Illinois

Mr. Roy H. Johnson
United States District Court
Chicago 4, Illinois

Re: Paul Ginsburg v. Hon. Philip L. Sullivan and Hon. Michael L. Igoe, United States District Judges, No. 12256

Gentlemen:

Enclosed is certified copy of the order of this Court denying petition for writ of mandamus.

Very truly yours,

KENNETH J. CARRICK
Kenneth J. Carrick, Clerk

KJC:hmm
Enc.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

PAUL GINSBURG, Plaintiff,
v.
JOHN D. BLACK, ET AL., Defendants.
No. 54 C 681

Transcript of Proceedings

had in the above-entitled cause before the Hororable Philip L. Sullivan, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Thursday, June 12, 1958, at 10:00 o'clock a. m.

APPEARANCES:

MR. PAUL GINSBURG
(Carlton House, Pittsburgh 19, Pa.),
Pro se;

MESSRS. WINSTON, STRAWN, SMITH & PATTERSON
(Suite 1400, 38 S. Dearborn Street,
Chicago 3, Ill.), by
R. LAWRENCE STORMS, ESQ.,
on behalf of Defendants.

Thereupon the following proceedings were had herein:—

The Clerk: 54 C 681, Paul Ginsburg v. John D. Black, et al., motion for change of venue.

Mr. Ginsburg: Good morning, your Honor.

The Court: This case I know is the one I got a letter on. You represent yourself and you are from Philadelphia?

Mr. Ginsburg: Pittsburgh, your Honor.

The Court: What jurisdiction do I have over any of it?

Mr. Ginsburg: Well, your Honor, there is also pending a motion for leave to file an amendment to the complaint.

The Court: Where is that pending?

Mr. Ginsburg: In this court, your Honor.

The Court: When?

Mr. Ginsburg: I sent it in about a month ago, for filing.

The Court: Was there a notice served or what?

Mr. Ginsburg: A notice was served for presentation of that for tomorrow.

The Court: What jurisdiction do I have?

Mr. Ginsburg: Your Honor, I would like to explain it to you. This court dismissed the action on it by applying the doctrine of absolute privilege.

The Court: Yes.

Mr. Ginsburg: The Court of Appeals affirmed the judgment of dismissal.

The Court: On a different ground.

Mr. Ginsburg: But, on a different ground. Therefore, the Court of Appeals, in effect, held that there is no absolute privilege applicable to this case.

The Court of Appeals took the position that the affirmance should be based on lack of publication by the

defendants. The Court of Appeals took the position that if there were publication, it would be by or through the American Bar Association which distributed everything that I sent to them for distribution, and the defendants, too.

Now, the Court of Appeals had—

The Court: Let me see. First, what is the position of the defendants?

Mr. Storms: If the Court please, I am here this morning as a courtesy to the Court and not representing the defendants. Judgment was entered in this cause.

The Court: What do you mean by "as a courtesy to the Court?

Mr. Storms: I am here in response to a motion. I am taking no affirmative action because there is nothing before the Court. I am not representing the defendants this morning.

The Court: It is your contention there is nothing before the Court?

Mr. Storms: Exactly, sir. Judgment was entered in July, 1955.

The Court: No order on both motions; no jurisdiction.

Mr. Ginsburg: Your Honor, may I call your attention to the point—

The Court: I get your point.

Mr. Ginsburg: (Continuing) — under Rule 15 of the Federal Rules of Civil Procedure, I am entitled to

amend once as a matter of course prior to trial. There has never been a trial.

The Court: After the Supreme Court of the United States has passed on it?

Mr. Ginsburg: Oh, yes.

Mr. Storms: He has been in the Supreme Court at least twice.

The Court: That is the order, no order.

Mr. Ginsburg: Your Honor, the Clerk of the Court has not yet docketed the filing of these motions. Can I tell him he is to docket them so there is a record of docket entry?

Mr. Storms: There is no case before this Court in which these papers can be filed.

The Court: That is the position of counsel?

Mr. Storms: Yes.

Mr. Ginsburg: Your Honor, under the law and the practice, the Clerk has no alternative but to file.

The Court: There is no order on that. There is no order on this. Call the next case.